

CLAUSE I-5 – AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (August 2002)

(a) Definitions:

"Covered area," as used in this clause, means the geographical area described in the solicitation for this subcontract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or a designee.

"Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means –

- (1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
 - (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
 - (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
 - (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Subcontractor, or a lower-tier subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such lower-tier subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this subcontract.
- (c) If the Subcontractor is participating in a Hometown Plan (41CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Subcontractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Subcontractor or lower-tier subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Subcontractors or lower-tier subcontractors toward a goal in an approved plan does not excuse any Subcontractor's or lower-tier subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The Subcontractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this subcontract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Subcontractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Subcontractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Subcontractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Subcontractor has a collective bargaining agreement, to refer minorities or women shall excuse the Subcontractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Subcontractor during the training period, and the Subcontractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Subcontractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Subcontractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Subcontractor's employees are assigned to work. The Subcontractor, if possible, will assign two or more

women to each construction project. The Subcontractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Subcontractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Subcontractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Subcontractor by the union or, if referred back, not employed by the Subcontractor, this shall be documented in the file, along with whatever additional actions the Subcontractor may have taken.
- (4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Subcontractor has a collective bargaining agreement has not referred back to the Subcontractor a minority or woman sent by the Subcontractor, or when the Subcontractor has other information that the union referral process has impeded the Subcontractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Subcontractor's employment needs, especially those programs funded or approved by the Department of Labor. The Subcontractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
- (6) Disseminate the Subcontractor's equal employment policy by –
 - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Subcontractor in meeting its subcontract obligations;
 - (ii) Including the policy in any policy manual and in collective bargaining agreements;
 - (iii) Publicizing the policy in the company newspaper, annual report, etc.;
 - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Subcontractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Subcontractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and Subcontractors with which the Subcontractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Subcontractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Subcontractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

- (13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Subcontractor's obligations under this subcontract are being carried out.
 - (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Maintain a record of solicitations for lower-tier subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Subcontractor's equal employment policy and affirmative action obligations.
- (h) The Subcontractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Subcontractor –
- (1) Actively participates in the group;
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the Subcontractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Subcontractor. The obligation to comply is the Subcontractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Subcontractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The Subcontractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Subcontractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The Subcontractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The Subcontractor shall not enter into any lower-tier subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (l) The Subcontractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
- (m) The Subcontractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Subcontractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
- (n) The Subcontractor shall designate a responsible official to –
- (1) Monitor all employment-related activity to ensure that the Subcontractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the Government; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction grade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an

easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).